

Postjudgment Motions and Appeals Under RAP 7.2(e)

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Bar Bulletin Blog: General



“Always Appealing” is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, P.S., a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.

This month’s column addresses the trial court’s obligation after a party files a notice of appeal to consider a renewed motion for judgment as a matter of law under CR 50, a motion to amend findings under CR 52(b), or a motion for new trial under CR 59, as well as a motion to vacate or modify a judgment under CR 60.1

Postjudgment Motions Can Avert a Lengthy Appeal

Trials are never perfect. Postjudgment motions under CR 50, 52, and 59 give a losing party another shot at turning a defeat into victory by allowing a trial court to correct a legal error that occurred during trial.

Postjudgment motions may avoid a time-consuming and expensive trip to appellate court. They also provide a means of addressing issues, such as juror misconduct or newly discovered evidence, that only come to light after the conclusion of trial.

Concurrent Jurisdiction Under RAP 7.2

While a party has only 30 days to file a notice of appeal following entry of final judgment, that deadline may be extended by filing a timely postjudgment motion under CR 50, 52, or 59. However, because the deadline for filing a notice of

appeal is deemed “jurisdictional,”² appellants have a strong incentive to file their notices of appeal within the fixed 30-day deadline following entry of judgment, rather than risk dismissal of an appeal as untimely because a postjudgment motion was itself untimely.³

What happens when a postjudgment motion is pending after a notice of appeal has been filed? As a general rule, the appellate court acquires jurisdiction, or “accepts review,” when a notice of appeal is filed, under RAP 6.1.4

Once the appellate court accepts review, RAP 7.2(a) narrowly limits the power of the trial court to continue making decisions. But RAP 7.2(e) contains notable exceptions, including granting the trial court not just authority but the obligation to decide postjudgment motions after a notice of appeal has been filed. RAP 7.2(e) also contains a peculiar mechanism to obtain a definitive and effective ruling on such motions in the trial court. It is a frequent source of confusion that has been repeatedly misapplied, adding time and expense to the appellate process.

RAP 7.2(e)’s Procedure

Counsel bringing a postjudgment motion needs to be familiar with RAP 7.2(e)’s particular procedures, both to convince trial court judges (1) of their mandatory duty to consider a postjudgment motion even though the case is already on appeal and (2) to avoid issuing a ruling that may be void or unenforceable if it modifies a decision under review.

The rule directs the trial court to consider a postjudgment motion authorized by the civil rules, criminal rules, or statutes and to consider any action “to change or modify a decision that is subject to modification by the court that initially made the decision.” RAP 7.2(e) also states that the motion “shall first be heard by the trial court, which shall decide the matter.”

If the trial court denies the motion, that is the end of the matter, except for the losing party’s right to seek appellate review of that denial, either independently or as part of a pending appeal, by filing a separate notice of appeal of the order.⁵

Things get more complicated if the trial court intends to grant postjudgment relief. Under RAP 7.2(e), “[i]f the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.”

How does the trial court make a “determination” without “the formal entry of the trial court decision”? This is where it gets tricky. If the court intends to modify the judgment that is under review, the trial court must make a tentative ruling. The moving party then must obtain the requisite “permission of the appellate court” by filing a motion asking the appellate court to grant permission to the trial court to formally enter its tentative ruling. Upon approval by the appellate court, the moving party then returns to the trial court for “formal” entry of the trial court’s decision.

That “formal” order then allows the appellate court to review the decision as it has been modified. The postjudgment order is also itself an appealable order.⁶

Practice Tips for RAP 7.2(e) Motions

Mechanically, it is useful to break the procedure down into its several steps. First, when moving for postjudgment relief in a case that has been appealed, the moving party should make clear that the motion is brought pursuant to RAP 7.2(e), quoting the rule’s requirement that the trial court must first “decide the matter,” explaining the manner in which the relief granted will change or affect the final judgment that is being appealed, and that any ruling granting the requested relief is conditioned upon obtaining subsequent approval from the appellate court. It is helpful to submit a proposed order that expressly states that formal entry of the order will only occur and is conditioned upon subsequent appellate court approval per RAP 7.2(e).

If in “deciding the matter,” the trial court grants provisional relief, the moving party must then file a motion in the appellate court explaining the precise manner in which the relief approved in the trial court will change the decision that is being reviewed on appeal. The motion should include as appendices the trial court’s tentative ruling and related pleadings filed in the trial court.

Once the appellate court grants the requested authority, the moving party must then return to the trial court and file a motion to formally enter the order the trial court had initially approved. The appellate court can then review the decision as modified, along with the merits of the postjudgment order, either separately or in a consolidated appeal along with the original judgment.

Ignoring RAP 7.2(e) Results in Needless Time and Expense

While these many steps appear time-consuming, the failure to abide by the process mandated by RAP 7.2(e) can result in substantial delay and wasted attorney time. A couple of recurring scenarios are illustrative.

Prevailing parties have opposed postjudgment motions on the erroneous ground that the notice of appeal divests the trial court of the authority to rule on the motion. Unfortunately, that argument has from time to time received a receptive ear from trial judges unfamiliar with RAP 7.2(e)'s mechanism for dealing with postjudgment motions.

The party opposing the postjudgment motion will be quick to alert the trial court that the moving party has appealed the judge's rulings. Trial court judges may then be loathe to revisit a case at the behest of the losing party, particularly when a postjudgment motion rehashes arguments the court has already heard (and rejected). Judges may be inclined to believe their work is done and that the losing party should just "take it to the Court of Appeals."

Judges need to be convinced that the rule gives the trial court not just the discretion but the obligation to rule on a postjudgment motion.

In one recent case, the trial court refused to rule on a plaintiff's CR 60 motion alleging that the defendant withheld critical evidence, only to be told — after the case had been briefed and was ready for consideration by the Court of Appeals — that the trial court must decide the motion before the Court of Appeals would consider the parties' arguments addressing merits of the judgment.⁷

In addition to relying on the mistaken basis that the trial court has lost authority to act, another recurring problem is the trial court's failure to recognize that it needs the appellate court's permission to enter an effective and enforceable postjudgment order modifying the original decision. For instance, the trial court's failure to receive express permission to enter findings supporting a judgment on appeal may render those late-entered findings void and ineffective if they in any way change the decision under appellate review.⁸

Other examples include granting a criminal defendant a motion to vacate his possession of controlled substances conviction under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021),⁹ sealing sensitive exhibits following a murder trial,¹⁰ and modifying an order directing an accounting.¹¹ The Court of Appeals

held these orders void because they in some way modify the decision under review and were entered while an appeal was pending without obtaining the appellate court's permission.¹²

Each of these cases resulted in substantial, and avoidable, expense and delay. The lesson is for counsel to become familiar with RAP 7.2(e) and more importantly, to educate the trial judge on its requirements.

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1 Though this article focuses on postjudgment motions under Washington's Superior Court Civil Rules, the discussion regarding a trial court's authority to decide such motions applies equally to motions brought under Criminal Rule 7.4 (arrest of judgment) and CrR 7.5 (new trial).

2 Buckner, Inc. v. Berkey Irrig. Supply, 89 Wn. App. 906, 911, 951 P.2d 338 ("A necessary prerequisite to appellate jurisdiction is the timely filing of the notice of appeal."), rev. denied, 136 Wn.2d 1020 (1998); see RAP 18.8(b) ("appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal ...").

3 See Schaefco, Inc. v. Columbia River Gorge Comm'n, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993) (dismissing appeal taken from untimely motion for reconsideration under CR 59).

4 Under Rule of Appellate Procedure 6.2(a), the appellate court also acquires jurisdiction upon granting a motion for discretionary review. As this article focuses on postjudgment motions, the discussion is limited to cases in which a party has appealed from a final judgment or other appealable order.

5 Under RAP 2.4(f), a timely appeal from a final judgment also "brings up for review the ruling of the trial court on an order deciding a timely motion based on" CR 50(b), CR 52(b), CR 59, CrR 7.4, or CrR 7.5.

6 RAP 7.2(e) ("The decision granting or denying a postjudgment motion may be subject to review."). Except for an order deciding a CR 60 motion to vacate, that decision may be reviewable as part of the appeal from a final judgment per RAP

2.4(f). Careful counsel would be well advised to file a separate notice of appeal in all cases. See n.2, supra.

7 A.K. v. State of Washington, Dep't of Soc. & Health Servs., No. 86100-0-I, Order (Wash. Ct. App. Jan. 31, 2025).

8 See, e.g., State v. Friedlund, 182 Wn.2d 388, 341 P.3d 280 (2015).

9 State v. Edwards, 23 Wn. App. 2d 118, 514 P.3d 692 (2022).

10 State v. Meza, 22 Wn. App. 2d 514, 512 P.3d 608, rev. denied, 200 Wn.2d 1021 (2022).

11 Herdson v. Fortin, 26 Wn. App. 2d 628, 530 P.3d 220, rev. denied, 2 Wn.3d 1009 (2023).

12 Herdson, 26 Wn. App. 2d at 651; Meza, 22 Wn. App. 2d at 548–49; Edwards, 23 Wn. App. 2d at 120.